Remarks

Applicants have canceled claims 9-15, 25, and 28 and amended claims 1-8, 16, 23-24, and 26, all without prejudice or disclaimer. In particular, claim 1 has been amended to remove subparts (h) to (o). Claims 2-8 have been amended to replace the term "polynucleotide" with "nucleic acid sequence" for proper antecedent basis. Claim 16 has been amended to incorporate the previous subject matter of claim 16 as directed to the remaining subparts of claim 1. Claims 23-24 and 26 have been amended to add the term "isolated." Applicants have also added claims 37-52, corresponding in part to the subject matter of previous claims 10-15, but with "consisting of" language. The amendments are fully supported by the claims and specification as originally filed, and thus no new matter has been added.

As the Examiner agreed during a telephone conversation on November 5, 2004, the withdrawal of claims 10-15 was made in error, since claims 10-15 were grouped with elected Group I in the previous action. Although claims 10-15 have been canceled herein, Applicants thank the Examiner for indicating that the subject matter encompassed by claims 10-15 (now partially encompassed by claims 37-52) would be examined together with the claims of Group I.

Applicants note that a correction to the inventorship of this application is being prepared, and will be submitted as soon as the required statements have been obtained from the inventors and assignees.

Claims 1-8, 16-24, and 26, and new claims 37-52, are pending.

I. Rejections Under 35 U.S.C. § 112, First Paragraph

A. Enablement

The Examiner has rejected claims 1-9 and 16-26 under 35 U.S.C. § 112, first paragraph for allegedly failing to comply with the enablement requirement. In particular, while the Examiner has agreed that the specification is "enabling for the nucleic acids of SEQ ID NO:1, degenerate variants encoding the polypeptide of SEQ ID NO:2, [and] vectors and isolated host cells comprising [the] same," the Examiner contends that the specification "does not enable polynucleotides encoding variants or fragments of SEQ ID NO:2." The Examiner appears to suggest that the encoded proteins must be "functionally equivalent to SEQ ID NO:2."

Applicants respectfully disagree, and assert that the previously pending claims are fully supported in the specification in accordance with 35 U.S.C. § 112, first paragraph. In particular, the Examiner appears to be impermissibly reading a functional limitation into the claims. However, Applicants note that claim 1 has been amended to remove subparts (h) to (o), and

claims 9-15 and 25 have been canceled, thereby obviating any rejection of those claims. Moreover, new claims 37-44 are directed to polynucleotides consisting of nucleic acid sequences encoding fragments of SEQ ID NO:2 at least 30 or 50 amino acids in length, while new claims 45-52 are directed to polynucleotides consisting of fragments of SEQ ID NO:1 at least 30, 40, 50, or 60 nucleotides in length. As discussed with the Examiner by telephone on November 5, 2004, these amendments are believed to obviate the instant rejection. Thus, the present claims satisfy the enablement requirement of 35 U.S.C. § 112, first paragraph, and Applicants respectfully request that the Examiner reconsider and withdraw the instant rejection.

B. Written Description

The Examiner has rejected claims 1-26 under 35 U.S.C. § 112, first paragraph for allegedly failing to comply with the written description requirement. In particular, while the Examiner has agreed that the specification describes "a polynucleotide (SEQ ID NO:1) and a polypeptide (SEQ ID NO:2)," the Examiner contends that "the description of one polynucleotide encoding an IRF polypeptide is not adequate written description of an entire genus of functionally equivalent polynucleotides and polypeptides" (emphasis added).

Applicants respectfully disagree, and assert that the previously pending claims are fully supported in the specification in accordance with 35 U.S.C. § 112, first paragraph. In particular, the Examiner appears to be impermissibly reading a functional limitation into the claims. However, Applicants note that claim 1 has been amended to remove subparts (h) to (o), and claims 9-15 and 25 have been canceled, thereby obviating any rejection of those claims. Moreover, new claims 37-44 are directed to polynucleotides consisting of nucleic acid sequences encoding fragments of SEQ ID NO:2 at least 30 or 50 amino acids in length, while new claims 45-52 are directed to polynucleotides consisting of fragments of SEQ ID NO:1 at least 30, 40, 50, or 60 nucleotides in length. As discussed with the Examiner by telephone on November 5, 2004, these amendments are believed to obviate the instant rejection. Thus, the present claims satisfy the written description requirement of 35 U.S.C. § 112, first paragraph, and Applicants respectfully request that the Examiner reconsider and withdraw the instant rejection.

C. ATCC Deposit

The Examiner has rejected claims 10-15 under 35 U.S.C. §112, first paragraph as allegedly containing subject matter which was not described in the specification in such a way as

to enable one skilled in the art to make and/or use the invention. In particular, the Examiner requests a statement regarding the availability of the ATCC deposit to the public.

In response, Applicants note that claims 10-15 have been canceled without prejudice or disclaimer; the presently pending claims no longer reference an ATCC deposit. Moreover, the address of the ATCC is correct in the specification. *See, e.g.,* paragraph 0015. Accordingly, the instant rejection under 35 U.S.C. § 112, first paragraph has been obviated, and should be reconsidered and withdrawn.

II. Rejection Under 35 U.S.C. § 102(b)

The Examiner has rejected claim 25 under 35 U.S.C. § 102(b) as allegedly anticipated by Hall, L.

In response, although Applicants do not acquiesce with the rejection, claim 25 has been canceled without prejudice or disclaimer, thereby obviating the instant rejection. Accordingly, the rejection under 35 U.S.C. § 102(b) should be reconsidered and withdrawn.

III. Rejection Under 35 U.S.C. § 112, Second Paragraph

A. Claim 25

The Examiner has rejected claim 25 as allegedly being indefinite for the recitation of the term "stringent conditions" in claim 11(c).

In response, although Applicants respectfully maintain that claim 25 fully complied with 35 U.S.C. § 112, second paragraph, claims 25 has been canceled without prejudice or disclaimer, thereby obviating the Examiner's rejection. Accordingly, Applicants respectfully request that the instant rejection be reconsidered and withdrawn.

B. Claim 26

The Examiner has rejected claim 26 as allegedly being indefinite because "the specification does not teach how to recombinantly produce a polypeptide from the complementary nucleic acid (refer to claim 1(o))."

In response, Applicants note that claim 26 no longer depends from claim 1(o) or another claim reciting the "complementary" term. In particular, subpart (o) has been removed from claim 1. Accordingly, Applicants believe that the Examiner's concerns have been addressed, and respectfully request that the Examiner's rejection of the claim under 35 U.S.C. § 112, second paragraph, be reconsidered and withdrawn.

Conclusion

Entry of the above amendment is respectfully solicited. In view of the foregoing remarks, Applicants believe that this application is now in condition for allowance, and an early notice to that effect is urged. The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicants would expedite the allowance of this application.

If there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an additional extension of time under 37 C.F.R. § 1.136, such an extension is requested and the appropriate fee should also be charged to our Deposit Account.

Dated: April 1, 2005

Respectfully submitted,

By _____

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